Studt. Geare died on December 28, 1954. Respondents, Hodson and Studt were defendants in the trial which ensued before a District Court Judge sitting as an equity judge to decide the issues whether Geare lacked capacity to make the deed on February 2, 1954 and whether that deed had been obtained by fraud, deceit, undue influence, duress or coercion. This is case No. 13201 in the United States Court of Appeals for the District of Columbia Circuit. The District Court decided for the Respondents as did the Court of Appeals.

No. 13,202

By will also dated February 2, 1954 (App. 10) Geare gave, devised and bequeathed all the residue of her property and estate "absolutely and in fee simple, unto Margaret Hynson Studt and Viola A. Hodson, share and share alike." Petitioners as Caveators attacked the will in the District Court on the grounds that Geare lacked mental capacity and that the will was obtained by fraud, deceit, undue influence duress or coercion. This is case no. 13202 in the United States Court of Appeals for the District of Columbia Circuit. The jury found in favor of Respondents' caveatees on all these issues and the Court of Appeals affirmed.

The two cases were tried simultaneously to jury and judge in the District Court and were consolidated for appeal.

Petitioners are, nephew and two nieces of the deceased. *Though present in the courtroom throughout the trials not one of them took the stand and testified.* In an effort to show cordial relationship between themselves and their aunt they introduced and read to the jury (1) a letter dated November 1948 giving permis-

sion to Grahame Smallwood (one of Petitioners) to copy certain lineage papers and giving certain family history which was signed "Affectionately, Aunt Dorothy" (P. Ex. 16) and a Christmas Card with a note from Aunt Dorothy expressing "Love and best wishes for 1953 (TR 190 *et seq.*).

Petitioners cases consisted principally of calling and cross-examining Respondent Hodson as adverse witness, producing testimony of a physician who saw Geare during the period April 30, 1954 to May 6, 1954 at St. Elizabeths Hospital (Dr. Anna Coyne Todd), and introducing hospital records of Emergency Hospital for the period April 18, 1954 to April 30, 1954 and St. Elizabeth's Hospital records for the period April 30, 1954 to May 6, 1954. Dr. Irma Belk Hobart of St. Elizabeth Hospital also testified but had insufficient recollection of the case to add anything material. Petitioners produced no direct testimony to support their contentions concerning the execution of the deed and the will on February 2, 1954 or shortly prior thereto or shortly thereafter.

Respondents on the other hand produced witnesses Edgar P. Hetzel and Katie May Ayre who testified as to the due execution of the deed and that Geare was of sound mind at that time and not under any constraint. The disinterested notary public Glenn C. Russell also testified to the same effect. Witnesses to the will Robert B. Smeltzer, a responsible businessman, and his son Robert Lionel Smeltzer, a lawyer admitted to practice in the District of Columbia and a businessman, testified that on the same day about three hours after the deed had been executed on February 2, 1954, Geare was of sound mind and capable of executing a valid deed or contract. The maid,

Elizabeth Hagler, testified to the effect that all day on February 2, 1954 Geare was competent and not under any undue influence. Withstanding a searching cross-examination, Hodson testified to the same effect. All of these witnesses as well as others indicated there was no undue influence, coercion, fraud or duress and that Geare was fully competent during this period.

Respondent Hodson testified that she was a close and intimate friend of Geare and had known her since 1910; that from time to time she loaned her money; that in March of 1942 Geare was an alcoholic who had been put out of her room and Hodson took her into her own home in Crestwood until she could find a place to live but she never left and asked Hodson to let her stay there; that Geare only contributed to her support sporadically; that she paid nothing in the last year of life (1954); that Hodson befriended her in many ways including driving her back and forth to work; that she obtained a job for Geare as an auditor in the Navy Department; that Hodson treated Geare like a sister; that in 1953 Geare's health started deteriorate and she lost weight after she had her teeth extracted and had a varicose vein operation; that she seemed to tire more easily; that in July 1953 she went on sick leave from her employment but returned and worked December 21, 22, 23, 24, 1953; that she voluntarily retired after the end of December 1953; that Geare continued to look after her own affairs and contracted with a Mr. Ward in September 1953 to repair her house at 3947 Porter Street, N. W.; that she attended a Christmas party in 1953 at the home of Mrs. Marguerite Hynson going and coming by herself; *that Geare's mental condition was sound at all times until Geare had a heart attack on March 22, 1954, that after that she became*

confused; that on April 18, 1954, she was taken to Emergency Hospital where she was more disoriented and confused; that she thought she was in San Francisco; that she got out of bed and walked around; that she was under sedation; that the officials at Emergency Hospital said they didn't have the facilities to look after Geare; that Hodson then made arrangements to transfer Geare to St. Elizabeths where she was transferred on April 30, 1954; that she was only there a week when she seemed better and asked Hodson to take her back into her home; that there was no adjudication and formal commitment; that the hospital officials at St. Elizabeths authorized Geare's return to Hodson's home on May 6, 1954; that Geare improved physically and mentally after that; that Geare was able to go out for hairdressing on August 18, 1954, and September, 1954; that on October 5, 1954, Hodson had to leave for Boston and she had no one to leave with Geare so she put her in Emergency Hospital at her physician's suggestion; that on Hodson's return Geare was worse; that on December 28, 1954, she died.

Witnesses Hynson, Studt, Hetzel, Hagler and Hodson testified in substance that around December, 1953, and January and February, 1954, Geare discussed disposition of her property; that she wanted the residue of her estate to be divided equally between Hodson and Margaret Hynson Studt, her godchild, who was the daughter of her college schoolmate, Mrs. Marguerite Hynson; that she wanted to deed the real estate to Hodson in order to increase the existing encumbrance so as to pay for repairs to continue to have the property rentable; that thereafter she wanted to deed the property to Hodson and Studt equally with the understanding that the income from the property

would be paid to Geare for life. With this agreement Geare conveyed property to Hodson on February 2, 1954, and after increasing the trust on April 13, 1954, Hodson conveyed an undivided one half interest to Studt. (Appees. 2, 3)

The considerable body of direct evidence for Respondents amply supported the findings of the District Court on November 3, 1955, which read as follows:

* * * * * *

> The Court: The issues relating to the validity of the will have been passed upon by the jury.
>
> Consolidated with the will contest, was the action to set aside the deed, and that action has to be determined by the Court without a jury.
>
> The Court stated, however, at the opening of the consolidated trial, that it would treat the verdict of the jury as advisory on those issues which were common to both cases. And treating the verdict as advisory, the Court is going to accept it and follow it.
>
> The Court might add that even if there were no advisory jury, the Court would independently reach the same conclusion.
>
> The Court finds that as of the date of the execution of the deed, the deceased had mental capacity to execute it;
>
> That the execution of the deed was not procured by any undue influence or fraud;
>
> And that the deed was intended to be a conveyance of the property in fee simple absolute, subject to a conveyance of a half interest to Mrs. Studt to whom Mrs. Hodson actually conveyed that half interest.
>
> The Court in conclusion may make the following comments.

The evidence on the issue of mental capacity was overwhelming that on February 2, and generally around that date, the decedent was in full possession of her mental faculties, and that she was fully aware of what she intended to do, and did exactly what she intended.

In fact, she would have been an ingrate if she had not given substantial recognition to Mrs. Hodson, who befriended her; who gave her a home in her declining years; and who was not being sufficiently or fully compensated for the room and board, and the care and the services, that she rendered.

The Court was impressed by the fact that although the psychiatrist found the testatrix of unsound mind sometime after she had a heart attack, and the psychiatrist testified that the condition must have existed for sometime prior to the examination, there was not a single witness who saw the decedent on or about February 2—some of whom were interested witnesses, but some of whom were disinterested—I repeat, there was not a single witness who saw the decedent around that time who *testified that she was otherwise than normal from* a mental standpoint.

The Court was impressed also by the circumstance that the caveators, the nephew and nieces, did not testify on this issue, or on any other issue. They did not testify because they did not know. They were not there. They never called to see their elderly aunt, although they were all living within easy distance. Their aunt was being befriended by a stranger, and yet this nephew and these nieces never having seen their aunt about this time, caused a document to be filed in this Court, alleging, in effect, that she was insane at that time. It seems to the Court that they were playing an ignoble part. I think it was due to thoughtlessness, rather than to evil intent, because

they are estimable and respectable people. But greed and cupidity sometimes makes even respectable people stoop to ignoble things.

They also caused a document to be filed attacking Mrs. Hodson as having exercised fraud and undue influence. The Court was impressed with the sincerity and the probity of Mrs. Hodson. She withstood a very able and skillful cross-examination, conducted in the best traditions of the Bar. She gave a very convincing explanation of how the deed and the will came to be drawn and executed. That she acted in good faith is evidenced in part by the fact that she testified that Mrs. Geare, the deceased, instructed her to convey a half interest in the property to Mrs. Studt, the godchild of the deceased, but in the meantime, she was to take the record title in her own name in order that it would be easier to obtain a loan on the property while Mrs. Studt might be in Panama.

This intent was carried out by Mrs. Hodson, although there was not a scrap in writing proving that Mrs. Geare gave any instruction to Mrs. Hodson to convey a half interest in the property to Mrs. Studt.

This is one of those cases that, unfortunately, happen all too often, where an elderly relative is cared for by a Good Samaritan, but is neglected by members of her own family; who stay away while the elderly relative is living, but spring forward to claim a share in the property after her decease.

I think the verdict of the jury is not only warranted and sustained by the evidence—no other conclusion was reasonable—but it also does equity, and is in accordance with good morals and good conscience.

The Court will render judgment for the defendant on the merits in the action relating to the deed, with costs to be assessed against the plaintiffs.

As to the will contest, besides the body of evidence previously summarized which was heard by the jury, as well as the judge, disinterested witnesses Robert B. Smeltzer and Robert Lionel Smeltzer proved due execution of the will. Witnesses Edna P. Hetzel, Katie May Ayre, Glenn C. Russell, Elizabeth Hagler and Viola A. Hodson proved the rational conduct of Geare throughout the day of February 2, 1954. Geare had luncheon downstairs when she was fully dressed; executed the deed around 5 to 5:30 P.M.; had dinner downstairs; watched newscast over television around seven o'clock; retired to her bedroom; executed will around 8 P.M. During day she even transacted some business. (Tr. 410)

Witnesses Studt, Hynson, Hetzel and Hodson testified of desire of Geare during end of December, 1953, and January and February, 1954, to dispose of her property by will, giving the residue to Hodson and Studt equally. Maid Hagler testified as to scraps of notes made by Geare around this time which she found on floor. (Tr. 475) Witness Hodson referred to handwritten notes made by Geare in January, 1954. (Appees. 5, 6, 7) Witness Hodson produced original letter dated February 17, 1954, (Appees. 9) from Geare which reads in part:

> "I am writing this memo in order to facilitate your work in disposing of my tangible personal property mentioned in item 'IV' of my Will dated February 2, 1954.
>
> First I wish to express to you, my devotion and gratitude for your love and care, and above all for your unfailing faith in me. Many times when all the world seemed black you have boosted my spirits and given me a new outlook on life. I shall be ever grateful for all your goodness to me.

The years since I came to you, in March, 1942, have been happy ones. As I have told you I have lived in your house longer than any place since I was born July 5, 1889. I wish to thank Frank for all his understanding care that has really made me feel secure in your home. Katie and Edna too, share in my grateful thanks. They have been wonderful understanding friends, and I love them dearly.

* * * * * *

To the children of my brother, namely Grahame T. Smallwood, Jr., Elizabeth Anne Wier and Eleanor Warrene Beasley, such photographs or family mementos they might desire, should they evidence any interest, but doubt that they will do so."

* * * * * *

Witness Phyllis M. Carpenter was Geare's supervisor at the Navy Regional Accounts Office of the Navy Department. She testified Geare was absolutely of sound mind in December, 1953 (Tr. 399); that Geare was an invoice auditor and very competent; that she saw Geare around latter part of February or early March, 1954, at Hodson's home; that Geare "definitely was of sound mind" (Tr. 400). Hodson used to bring Geare to work and occasionally she rode the bus (Tr. 406).

Witness Edna P. Hetzel testified that Geare's mental condition was good even to early March, 1954, but she was in rundown physical condition and had lost weight (Tr. 409). Geare was well taken care of by Hodson; anything Geare desired she had; and all the care she needed through the years (Tr. 420 *et seq.*). Hodson took her riding and fixed anything she wanted to eat. "It was a very loving kindness there." (Tr. 421) Wit-

ness Ayre stated Hodson treated Geare same as she did Ayre and Ayre was Hodson's sister (Tr. 450).

Witness Grissinger testified Geare was in her hairdresser shop as late as September, 1954, and on August 18, 1954 (Tr. 463), but never saw anything wrong with her mind (Tr. 465). "She had a brilliant mind" (Tr. 465).

Witness Hagler said as to clippings that Geare stated she was changing her will; that Geare said " 'Well, I am changing it because my relatives I haven't seen for some time.' And she says, 'No one loves me.' And she said, 'But for Mrs. Hodson, I would be sleeping in the park.' " (Tr. 475).

Witness Sisk, a real estate broker saw Geare once a week in January and February, 1954, and she was of good mental condition. Witness Greenstreet testified to the same general effect.

Witness Hynson testified she and Geare were College classmates in 1908 and had been friends thereafter; (Tr. 497); that they had Christmas dinner in 1953; that in January, 1954, Geare spoke to her about changing her will and she and her daughter Studt visited Geare; that Geare was then working on her income tax return (Tr. 498); that Geare said she wanted to include Studt in her will (Tr. 499); that her mental condition in December, 1953, and January, 1954, was as clear as it ever was.

Witness Studt corroborated her mother's testimony (Tr. 510) including Geare's statement that she intended to make her a beneficiary under her will (Tr. 513).

REASONS FOR DENYING WRIT

I

The Cases Are Matters of Local Law

These issues in these cases are factual and have been decided by the equity judge and the jury in favor of the validity of the deed and will. The judge determined as facts that the decedent had sufficient mental capacity to make the deed on February 2, 1954 and that the deed was not obtained by fraud, deceit, undue influence, duress or coercion. The jury decided as facts that decedent had sufficient mental capacity to execute her will on February 2, 1954 and that the will was not obtained by fraud, deceit, undue influence, duress or coercion.

There is no constitutional question involved. Petitioners are simply disappointed litigants who seek another hearing, having lost twice below, with the Court of Appeals rendering a unanimous *per curiam* opinion. The writ, sparingly exercised, should not be granted to review the evidence or inferences drawn therefrom by the judge and jury and already once thoroughly reviewed by the Court of Appeals. These are not cases of peculiar gravity, nor of great public concern. Neither do they involve great questions in the public interest.

II

The Alleged Error in Excluding Certain Evidence Does Not Affect the Substantial Rights of the Parties

Petitioners alleged various errors before the Court of Appeals but the only one now relied upon is the exclusion of an unsigned St. Elizabeth's Hospital admissions form purportedly made around May 6, 1954.

The full text of the Form is P. Ex. 14 printed in App. 32.

First it is significant to note that the paper was not signed merely containing the initials "J.M.W." (See original P. Ex. 14). J.M.W., whoever that was, was not produced for cross-examination at the trial although two physicians from St. Elizabeth's Hospital were produced under Petitioners' subpoena and testified, namely: Dr. Anna Coyne Todd and Dr. Irma Belk Hobart.

The "Standard Form 507" opens with a statement of opinion of the unsigned "examiner's" opinion as follows:

> "Note: The information appears to be valid. The informant is a well-dressed, cultural gentle woman, who makes a real effort to impress the examiner with her contacts in the Washington social scene. The patient has been living with the informant for the last 13 years" (App. 32.)

This was obviously properly excluded since there was no opportunity to cross-examine.

The Form then goes on to recite some admissions data but it is clear that routine entries of observed facts such as rate of pulse, blood pressure, amount of urine voided, etc., are not included. It contains conjecture which is at variance with sworn testimony such as "In September of 1953, the patient had an episode that was possibly a nonparalytic cerebro-vascular accident in which her hands suddenly went limp and cold" (App. 33). There is no testimony whatever in the case to support this statement. In fact the testimony of the large number of witnesses produced by Respondents is exactly the opposite. (See Counter-Statement of

Facts) "During the early months of 1954, the patient seemed to be going more and more into a stupor" (App. 33). Even Drs. Hobart and Todd of St. Elizabeth's Hospital staff admitted they had no first-hand information or knowledge prior to their examinations of Geare in May, 1954. Hodson denied under oath she had said that Geare had stopped reading in March and April, that Geare had visual hallucinations, or Geare would greet people not there. Appellee Hodson was under strict cross-examination; certainly she had the same right as to any persons seeking to contradict her.

The statement was further inaccurate when it states that Geare went to Emergency Hospital on *February 18*, Geare went on April 18. That was undisputed in the testimony.

The statements contained in the Form along the following lines are already repeated throughout the testimony: that beginning in January, 1953, Geare lost weight; that she was fatigued in 1953; that her appetite fell off; that she had heart attacks in March and April 1954; that she was disoriented and confused while at Emergency Hospital from April 18-30, 1954; that she thought then that she was in San Francisco; that at Emergency Hospital she got out of bed and pulled clothes off other patients; that they then asked that she be removed from the hospital; that on the 30th she was brought to St. Elizabeths. This much was conceded. If error to exclude, it was harmless. (Rule 61, Fed. R. Civ. P.)

The will and deed were executed on *February 2, 1954*. Seven witnesses—Hodson, Hagler, Robert B. Smeltzer, Robert L. Smeltzer, Hetzel, Ayre, Russell—all saw decedent on *February 2, 1954* and all testified

Geare was of sound mind and under no constraint. *No witnesses were produced to the contra* as to this date. It was conceded that on March 22, 1954, over a month and a half later, that Geare had a heart attack and became thereafter disoriented and confused; that on April 18, 1954 Geare was taken to Emergency Hospital and her condition worsened; that Geare was transferred to St. Elizabeths on *April 30 1954 (over two and one-half months after execution of the will and deed)*; that Geare remained only one week and was never adjudicated; that Hodson took Geare out of St. Elizabeth's Hospital with their permission on May 6, 1954 and returned her to her own home.

To admit this Form containing guesswork opinion of an unknown person would have been highly improper and prejudicial.

Furthermore lengthy hospital records containing accurate factual data were admitted in the case without objection. (See Appees. Supp. 1-7)

Rule 61 Fed. R. Civ. P. provides:

> "No error in either the admission or the exclusion of evidence and no error or defect in any ruling or anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The Court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."

This Form was also properly excluded under *New York Life Insurance Company* v. *Taylor*, 79 U. S. App.

D. C. 66, 147 F. 2d 297; *Clainos* v. *United States*, 82 U. S. App. D. C. 278, 163 F. 2d 593; *Palmer* v. *Hoffman*, (N.Y. 1943) 318 U. S. 109, 87 L. Ed. 645, rehearing denied 318 U. S. 800, 87 L. Ed. 1163.

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

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